The only act of negligence which the learned district judge found was that the appellant failed to keep a proper look out. In his grounds of decision he said:

"I accepted the facts that the taxi had stopped somewhat suddenly and perhaps without putting up hand signals. Inspite of that I was of the opinion that if the accused had kept a proper look out he should have been able to avoid the impact before a pedestrian crossing. I therefore rejected this submission also and held that the negligence of the accused was the proximate efficient cause of the death of the pedestrian."

In the Indian case of *Emperor* v. *Omkar Ram Pratap* [1] it was held that to impose criminal liability under section 304A of the Indian Penal Code (which is similar to our section 304A of the Penal Code) it is necessary that the death should have been the direct result of a rash and negligent act of the accused and that act must have been the proximate and efficient cause without the intervention of another's negligence. It must have been the *causa causans*; it is not enough that it may have been *causa sine qua non*. I am of the opinion that the law has been laid down correctly in that case.

In the present case the death of the pedestrian was due to the collision between the appellant's car No. NA. 3317 and the taxi and in order to impose a criminal liability on the appellant it must be found as a fact that the collision was entirely or at least mainly due to the act of the appellant.

Now, was the learned district judge, on the evidence before him, right in forming the opinion that "if the accused had kept a proper look out he should have been able to avoid the impact before a pedestrian crossing." In my view he was wrong to form that opinion. Goh Teck Seng, the eye witness whose evidence the learned district judge accepted, said that the taxi driver had just spotted the pedestrian and managed just to stop and that he did not give any signal and that the accident happened because the car driver had no chance to stop.

There is no doubt that the taxi driver was negligent in that he failed to see the pedestrian until he was almost upon her and he had to stop suddenly without giving any signal. I am of the opinion that so far as the evidence goes it is not sufficient to establish that the appellant was wholly or mainly responsible for the collision.

Appeal allowed.

Solicitors: *Murphy & Dunbar.*

GULWANT SINGH v. ABDUL KHALIK

[O.C.J. (Gill J.) April 22, 1964]

[K.L. — Civil Suit No. 31 of 1961]

Moneylending — Memorandum of contract — Copy not authenticated — Copy of promissory note authenticated — Whether contract enforceable — Moneylenders Ordiance, 1951, s.16 — Repayments — Not clear whether towards principal or interest — Course to adopt.

Evidence — Witness telling lies — Treatment of rest of evidence with caution.

Costs — Amount due at judgment date would not exceed $2,000 — Sessions Court scale.

In this action the plaintiff sought the recovery of money due on a promissory note executed by the defendant in the plaintiff's favour for $2,500 with interest. The copy of memorandum of contract was not duly authenticated by the plaintiff before it was delivered, but the copy of the promissory note was.

Held: a promissory note which contained all the terms of the contract and was countersigned by the lender was in itself a sufficient memorandum of the contract for the purpose of section 16 of the Moneylenders Ordinance and therefore the plaintiff was not precluded from enforcing the contract.

Per Gill J.: "....from the evidence produced by the defendant it was clear that he made various payments, but it was not clear whether they were made towards principal or towards interest. In the circumstances the only course for me to adopt was to allow credit for each payment against the sum then due towards principal and interest and then work out the interest on the outstanding balance of the principal sum after the date of each payment."

Observations on evidence of witness who demonstrably tells lies.

ACTION.

Peter Mooney for the plaintiff.

K. Chelvanayagam for the defendant.

Gill J.: This was an action for the recovery of money due on a promissory note executed by the defendant in favour of the plaintiff on 26th March, 1959 for a sum of $2,500 bearing interest at the rate of 18% per annum.

The loan transaction took place in the office of Messrs. Bannon & Bailey, a firm of advocates and solicitors in Kuala Lumpur, where the promissory note sued upon (exhibit P.1) and a memorandum of contract (exhibit P.2) together with copies of each document were prepared. I was satisfied on the evidence that these copies were delivered to the borrower before the money was lent. In fact they were produced at the trial by the defence. It was quite clear that the copy of the memorandum (exhibit D.3) was not duly authenticated by the plaintiff before it was delivered, although the copy of the promissory note (exhibit D.4) was authenticated before delivery.

It was argued by Mr. K. Chelvanayagam on behalf of the defendant that as the copy of the memorandum delivered to the defendant was not authenticated by the plaintiff, the contract was not enforceable. That would appear to be so by

reason of the provision of section 16(1) of the Moneylenders Ordinance, 1951, but it is clear from section 16(4) of the Ordinance that a promissory note which contains all the terms of the contract and is countersigned by the lender is in itself a sufficient memorandum of the contract for the purpose of section 16. I therefore decided that the plaintiff was not precluded from enforcing the contract by reason of the provisions of section 16 of the Ordinance.

One of the defences set up in this case was that the amount lent on the security of the promissory note was not correctly stated. It was contended on behalf of the defendant that the amount actually lent was $2,000 and not $2,500. In this connection there was the evidence of Miss Phaik Joo Lim (P.W.1), a legal assistant in the firm of Bannon & Bailey, to the effect that before she attested the promissory note she made sure that the amount mentioned was paid to the borrower. Indeed she went on to say that in the case of all such transactions she always insisted that the money should be handed to her and that she would count the money and having satisfied herself that the amount was correct would pay to the borrower. She denied under cross-examination that the defendant told her that a sum of $500 had been paid to him earlier on before the execution of the promissory note

Gaffoor Samy (P.W.2), a clerk of Messrs. Bannon & Bailey, testified that the amount of the loan was $2,500 and that it was never suggested that that might not be the real amount. He said that he saw Miss Lim count the money although he did not know how much it was. He also denied that the defendant told him that $500 had been paid to him earlier and that only $2,000 was to be paid then. There was further the evidence of the plaintiff himself who said that after Miss Lim had checked the documents he gave her $2,500, and that she having counted the money handed it to the defendant. He stated further that the defendant counted the money and did not say at any time that he had not received the correct amount, nor did he say anything about having received any part of the loan before.

In my opinion there was overwhelming evidence that a sum of $2,500 was actually lent to the defendant, so that the amount was correctly stated in the promissory note. Thus, here again there was no question of there being any bar to the plaintiff enforcing the contract for the recovery of the money.

The only other question to be decided in this case was, what was the amount due to the plaintiff? The plaintiff's evidence was that he received only five payments of $100 each towards interest and that the first of such payments was made on 24th November, 1960, some 20 months after the date of execution of the promissory note. The defendant, on the other hand, stated in evidence that he made his first payment of $200 on 19th April, 1959 and that thereafter he paid $100 a month on various dates at intervals of a month or two until 19th July, 1960, making a total sum of $1,500. The defendant went on to say that some time in September, 1960 he received a letter from Messrs. Bannon & Bailey written on behalf of the plaintiff. In reply to that letter he wrote his letter dated 24th September, 1960 (exhibit D.8) in which he set out all the payments which he had made to the plaintiff and enclosed a money order for a further sum of $100. It is significant that this assertion by the defendant in his letter as regards these earlier payments was not promptly refuted by the plaintiff or his solicitors. The defendant made subsequent payments of $100 each on various dates to Messrs. Bannon & Bailey, which of course were not denied.

The defendant called his cashier Sultan Shah (D.W.3) and his clerk Syed Isa (D.W.2), both of whom testified that they were witnesses to all the payments made to the plaintiff from 19th April, 1959 to 19th July, 1960. Some of these payments, according to them were made to the plaintiff's attorney named Surat Singh. Syed Isa said that he made a note of each payment on a piece of paper and that on the same day recorded the payments in a personal account book of the plaintiff. This book was produced at the trial and marked as exhibit D.9. After a careful examination of this book I had no reason to doubt that the payments made to the plaintiff were recorded in that book as stated by Syed Isa. The book looks very much like a rough book, but there is no doubt that it contains accounts of transactions which the defendant had with other moneylenders. Having considered all the evidence as regards these payments, and on the balance of probabilities, I was satisfied that they were in fact made.

It was urged upon me by Mr. Mooney on behalf of the plaintiff that as the defendant had lied to the court as regads the amount actually lent to him, and in view of his denials that he had borrowed money from other moneylenders, I should reject his evidence. It is true that if a witness demonstrably tells lies the rest of his evidence must be treated with caution, and indeed I had that rule very much in mind, but in the face of all the other evidence I was driven to the conclusion that the payments as alleged by the defendant and his witnesses were in fact made. I was not forgetful of the fact that the defendant's witnesses rely upon him for their livelihood but that was no reason for me to brand them as liars. It is not inconceivable for a borrower in a case such as this to try to get out of his liability by relying on the provisions of the Moneylenders Ordinance, but to my mind no

court would be justified on that ground alone to reject all his evidence as regards repayments.

As I have stated above, from the evidence produced by the defendant it was clear that he made various payments, but it was not clear whether they were made towards principal or towards interest. In the circumstances the only course for me to adopt was to allow credit for each payment against the sum then due towards principal and interest and then work out the interest on the outstanding balance of the principal sum after the date of each payment. I therefore made an order for the Registrar to ascertain the amount actually due on the date of the judgment in accordance with that formula. Having made a rough calculation as to the amount due on the date of the judgment I was satisfied that it would not exceed the sum of $2,000. I therefore made an order for costs on the Sessions Court scale.

Order accordingly.

Solicitors: *Skrine & Co.; K. Chelvanayagam.*

TEE TEONG TONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Gill J.) April 25, 1964]

[K.L. — Criminal Appeal No. 2 of 1964]

Income Tax — Notice requiring a limited company to submit returns with audited accounts and balance sheet — Non compliance with notice — Income Tax Ordinance, 1947, ss. 59(1) and (3), 61 and 90(2).

The appellant the managing director of a limited company was served with a notice under section 59 of the Income Tax Ordinance requiring him to submit income tax returns together with certified true copy of the audited accounts and balance sheet. The notice of assessment was duly completed and returned but the notice for submission of the audited accounts and balance sheet was not complied with. The appellant was consequently charged under section 59(3) and convicted under section 90(2) of the said Ordinance and was fined $500, in default three months imprisonment. On appeal it was contended on behalf of the appellant that the Comptroller had no power under section 59 to ask for audited accounts and balance sheet and that such accounts and balance sheet could only have been called for under section 61 of the Ordinance.

Held: in the case of a company the Comptroller is given clear powers under section 59 to require the audited accounts and balance sheet to satisfy himself that the income is correctly stated in the income tax returns. Section 61 of the Ordinance gives him the same power and the additional power of requiring the production of any books documents accounts and returns as well as personal attendance for the purpose of further verification of the accounts. The notice of the Comptroller was therefore a good notice and the appeal must be dismissed.

CRIMINAL APPEAL.

L. M. Ong for the appellant.

Wan Hamzah (Deputy Public Prosecutor) for the defendant.

Gill J.: The appellant in this case was convicted in the Sessions Court at Johore Bahru on the following charge:

> "That you, Tee Teong Tong, the managing director of Tylot & Co. Ltd., 1-A, Jalan Dato Abdullah Tahir, Johore Bahru, Johore, being required by a notice in writing by the Acting Assistant Comptroller of Inland Revenue, Federation of Malaya, Johore Bahru, to furnish him within twenty-one days from 29th September, 1962 with return of income for the year of assessment 1962 together with a certified true copy of the audited trading and profit and loss accounts for the year ended 31st December, 1961 and an audited balance sheet as at that date of Tylot & Co. Ltd., though submitted the 1962 return of income on the 29th October, 1962, failed, without reasonable excuse, to furnish the aforesaid certified true copy of the audited trading and profit and loss accounts and the audited balance sheet thereby committing an offence under section 59(3) of the Income Tax Ordinance No. 48 of 1947 (as amended) and punishable under section 90(2) of the said Ordinance."

and sentenced to a fine of $500 in default 3 months' imprisonment.

There was no dispute about the facts of the case and the defendant elected to say nothing in his defence. The facts very briefly were that a notice of assessment of income tax for the year ending 31st December, 1961 was served on the appellant as the managing director of Tylot & Co. The notice of assessment was duly completed and returned to the appropriate income tax authority, but the notice for submission of the audited accounts and audited balance sheet was not complied with.

The appeal was brought on two grounds, one of which was that no sanction to prosecute either by the Comptroller of Income Tax or by the Public Prosecutor as required by section 95 of the Income Tax Ordinance, 1947 had been produced. This ground was raised because no copy of the sanction had been included in the appeal record. It was clear, however, that a sanction was produced at the trial. Consequently this ground was withdrawn.

The other ground turned on the interpretation of section 59(1) of the Ordinance. It was argued by Mr. L. M. Ong on behalf of the appellant that the notice was wrongfully issued under section 59 as the Comptroller has no power under that section to ask for audited accounts and balance sheet and that such accounts and balance sheet could only have been called for under the provisions of section 61 of the Ordinance. He went on to say that had a notice been issued under section 61 of the Ordinance no objection could be taken to it.

It is to be observed that section 59(1) of the Ordinance gives the Comptroller the power to require any person to furnish not only a return of income but "such particulars as may be required for the purpose of ascertaining the income". In my opinion in the case of a company the Comptroller is given clear powers